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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14	EUGENE EVAN BAKER,)	NO. CV 10-3996-SVW(AJWx)
)	
15)	
	Plaintiff,)	
16)	
	v.)	Date: October 4, 2010
17)	Time: 1:30 p.m.
)	
18	ERIC H. HOLDER, JR.,)	
	ATTORNEY GENERAL,)	
19)	
	Defendant.)	Hon. Stephen V. Wilson
20	_____)	United States District Judge

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23 (1) NOTICE OF MOTION AND MOTION TO DISMISS; AND
24 (2) MEMORANDUM OF POINTS AND AUTHORITIES.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 In this action for Declaratory and Injunctive Relief,
4 Plaintiff Eugene Evan Baker ("Baker") seeks an Order from this
5 Court declaring that he "may lawfully own, possess and use a
6 firearm" under the Second Amendment of the Constitution.
7 (Complaint ¶ 1)

8 On September 29, 1997, Baker was convicted in California of
9 domestic violence, a misdemeanor. (*Id.* at ¶¶ 1 & 9) On October
10 20, 1997, he was sentenced to three-years probation. (*Id.* at ¶
11 10) One of the conditions of his probation was that he not own
12 possess or have access to a firearm for a period of ten (10)
13 years. (*Id.*) On June 19, 2002, after successfully completing
14 probation, Baker's conviction was, according to Baker, "expunged
15 and set-aside" under California Penal Code § 1203.4. (*Id.* at ¶¶
16 1, 11 & 12) The original ten-year prohibition on Baker's
17 possession or use of a firearm expired on October 20, 2007. (*Id.*
18 at ¶ 14)¹

19 Baker does not claim that Defendant has brought charges
20 against him for unlawful possession of a firearm. He does not
21 claim that he was unlawfully denied a firearm, nor does he claim
22 that he has even ever applied to purchase a firearm at any time
23 since 2002. He claims simply that, in June 2009, an employee of
24 Ojai Valley Surplus, a firearms dealer, advised him that federal
25 law prohibits him from purchasing a firearm. (*Id.* at ¶ 15)

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27 ¹ On March 11, 2010, a California court declared that Baker "is
28 entitled to purchase, own and possess firearms consistent with
the laws of the State of California." (*Id.* at ¶ 17 & Exhibit 2
to Complaint)

1 Baker has apparently filed this federal suit in order to enjoin
2 Defendant from prosecuting him, in the event that he one day "be
3 found to own, possess or use a firearm." (*Id.* at ¶ 5)

4 This action should be dismissed in its entirety under
5 Fed.R.Civ.P. 12(b)(1), because Baker has sustained no actual
6 injury nor is there an actual threat of federal prosecution.
7 Even if Baker had standing or were able to present claims that
8 were ripe, this action should nevertheless be dismissed under
9 Fed.R.Civ.P. 12(b)(6) because Baker's claims are squarely
10 foreclosed by the Ninth Circuit's decision in Jennings v.
11 Mukasey, 511 F.3d 894 (9th Cir. 2007).

12 ARGUMENT

13 I. THIS CASE DOES NOT PRESENT A LIVE CONTROVERSY.

14 The Constitution limits the federal judicial power to
15 designated "cases" and "controversies." U.S. Constitution,
16 Article III, § 2. Justiciability embraces well-settled
17 limitations on federal court jurisdiction. No justiciable
18 controversy is presented, for example, when the plaintiff lacks
19 standing to sue. See Lujan v. Defenders of Wildlife, 504 U.S.
20 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992).
21 Similarly, no live controversy exists when the claim is not yet
22 ripe for review. Thomas v. Union Carbide Agricultural Prod. Co.,
23 473 U.S. 568, 580, 105 S.Ct. 3325, 3332, 87 L.Ed.2d 409 (1985).
24 Neither of these jurisdictional limitations is satisfied here.

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1 A. Standing.

2 To establish "a case or controversy" within the meaning of
3 Article III, at a minimum, the plaintiff must show an "injury in
4 fact" that is concrete and not conjectural. Lujan, 504 U.S. at
5 560-61, 112 S.Ct. 2130, 2136; Baker v. Carr, 369 U.S. 186, 204,
6 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962). This requirement tends
7 to assure that plaintiffs have a sufficient stake in the outcome
8 of the suit to make it a live controversy. See Bullfrog Films,
9 Inc. v. Wick, 847 F.2d 502, 506 (9th Cir. 1988).

10 Baker does not claim that Defendant has brought charges
11 against him for unlawful possession of a firearm. He does not
12 claim that he was unlawfully denied a firearm, nor does he claim
13 that he has even ever applied to purchase a firearm at any time
14 since 2002. He alleges simply that an employee of Ojai Valley
15 Surplus, a firearms dealer, advised him that federal law
16 prohibits him from purchasing a firearm. Because Baker does not
17 allege that he took some action to obtain a firearm, beyond
18 soliciting the legal advice of a firearms dealer, his claim of
19 constitutional deprivation is based on sheer conjecture.

20 B. Ripeness.

21 The ripeness doctrine prevents premature adjudication. As
22 in cases involving no injury in fact, the ripeness doctrine is
23 aimed at cases that do not yet have a concrete impact upon the
24 parties arising from an actual dispute. Thomas, 473 U.S. at 580,
25 105 S.Ct. at 3332. "A claim is not ripe for adjudication if it
26 rests upon contingent future events that may not occur as
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1 anticipated, or indeed may not occur at all." Texas v. United
2 States, 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998)
3 (internal quotation marks omitted).

4 Here, Defendant has not criminally prosecuted Baker, or
5 notified him that he will be prosecuted, for unlawful possession
6 or use of a firearm. Indeed, Baker fails to allege that he owns
7 or has even applied to purchase a firearm. Because Baker
8 requests a judgment based on a right he may never assert, his
9 case cannot be brought in an Article III court.

10 II. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN
11 BE GRANTED.

12 In 1996, Congress amended the Gun Control Act ("GCA") to
13 make it unlawful for any person convicted of a misdemeanor crime
14 of domestic violence to "ship or transport in interstate or
15 foreign commerce, or possess in or affecting commerce, any
16 firearm or ammunition; or to receive any firearm or ammunition
17 which has been shipped or transported in interstate or foreign
18 commerce." 18 U.S.C. § 922(g)(9). "Persons who have had
19 [misdemeanor crime of domestic violence] convictions are
20 prohibited by 18 U.S.C. § 922(g)(9) from, among other things,
21 transporting, shipping, possessing, or receiving firearms."
22 Jennings v. Mukasey, 511 F.3d 894, 898 (9th Cir. 2007).

23 In his Complaint, Baker's alleges that he should be
24 permitted to possess or use a firearm, notwithstanding the
25 express prohibition of 18 U.S.C. § 922(g)(9), because his
26 conviction was "expunged and set-aside" by a California court
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1 under California Penal Code § 1203.4. (Complaint at ¶¶ 1, 11 &
2 12) Baker's claim is foreclosed by Jennings v. Mukasey, 511 F.3d
3 894 (9th Cir. 2007). Like Baker, the plaintiff in Jennings
4 claimed that he was entitled to possess and use a firearm,
5 because his prior conviction for domestic violence had been
6 "expunged" by a California court under § 1203.4. Jennings, 511
7 F.3d at 898. The Ninth Circuit held that the state court order
8 under § 1203.4 "did not expunge [the plaintiff's] conviction for
9 purposes of 18 U.S.C. § 922(g)(9).

10 Baker also alleges that his "right to bear arms" is
11 "revived" by 18 U.S.C. § 921(a)(33)(B)(ii), which provides, in
12 pertinent part, that persons with domestic violence convictions
13 may possess firearms if they have been pardoned or have had their
14 civil rights restored. (Complaint ¶ 26) However, that position
15 is also foreclosed Jennings. See Jennings, 511 F.3d at 900-01
16 (noting that the plaintiff's expungement order "did not purport
17 to restore his civil rights"). Here, Baker's Complaint attaches
18 the transcript of the state court proceeding in which the court
19 expressly declined to restore his civil rights under the Second
20 Amendment, stating: "I'm going to line out his second amendment
21 right to bear arms is hereby fully restored. And my order will
22 then say that Mr. Baker is entitled to purchase, own and possess
23 firearms consistent with the laws of the State of California."

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CONCLUSION

For the reasons set forth above, Defendant requests that his Motion be granted.

Respectfully submitted,

DATED: August 20, 2010

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